

1874

CHAS. W. B. B.

President of the Board

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BRIEF

OBSERVATIONS

ON THE

Punishment of the Pillory.

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ORIGINAL.  
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1814.

BRIEF

OBSERVATIONS, &c.

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**T**HE sentence recently pronounced on a distinguished naval officer, the public feeling with which it was followed, and the ultimate remission of its severest penalty, naturally lead to the discussion of the punishment itself, which so powerfully aroused the pity and the indignation of the public. It is by occurrences like this; by extreme cases which call into exercise the dormant feelings, that those investigations are excited which terminate in the reform of the most ancient and deep-rooted abuses. Evils which the barbarism of remote ages, or the pressure of immediate danger, has thrust into the system of government, and which have long in silence obstructed the progress of society, are regarded as necessary and proper, or wholly overlooked, merely, because they form a part of that order of things, which we have always been accustomed to admire. We admit all that power to be legitimate which we have always seen administered with mildness. We have acquiesced in the propriety of those inflictions which

never disturbed the circle in which we move. We overlook the causes which are secretly moulding the character of the state, while they do not interfere with our enjoyments, and while they affect those alone, whose fate excites but little of our sympathy. But when power perverts its energy, and when its enactments, which merely oppressed the lowlier ranks of men, press rudely on those in whose fate we cannot but feel deeply concerned; we suddenly perceive the mischief in its deepest foundations, and shake them by the awful voice of peaceful and enlightened discussion. Thus evil is finally subversive of itself; its most dreadful examples facilitate its overthrow; its excesses destroy the principle from which they arise. Thus the arbitrary extortions of Charles might have furnished a woeful precedent for our future kings, had not the levy of ship-money called into action the spirit of Hampden. The wanton cruelty of the tyrant of Switzerland awoke "the might that slumbered in a peasant's arm," to break the chains of its generous and noble mountaineers. By the illegal proceedings against Wilkes, general warrants have been abolished for ever. And the efforts of a late minister to atone for the reforming zeal of his youth, by dragging those men to a scaffold whom he had first seduced into remonstrance, made way for the immortal integrity and eloquence of Erskine, and gave a death blow to the sanguinary doctrine of constructive treason.

Encouraged by such examples, with which history is abundantly prolific, we hope to make some practical improvement of the sentence pronounced on Lord Cochrane, by directing the attention of our countrymen to the *species* of infliction at the *instance* of which they so generously revolted. We shall, in pursuit of this object, lay before them a few simple observations, on the principle upon

which exposure in the pillory is founded ; the inequality of its operation ; the uncertainty of its influence ; the impropriety of its attendant circumstances, and their general tendency on the feelings and hearts of the spectators.

I. The punishment under our discussion has received a most important alteration from the refinement of modern times. When first introduced into Britain, it was uniformly attended with some infliction of corporeal suffering. The ears were frequently nailed to the wood of which the pillory was composed, and severed from the head of the culprit, or the cheek branded with burning iron. Its publicity then formed merely a slight ingredient in its terrors. But, now, when these barbarities are happily become obsolete, the old sting of this once terrible sentence is taken away ; bodily pain is no longer denounced by the judge, however it may be inflicted by the multitude ; and the emotions it is intended to excite in the sufferer are simply those of shame and confusion. He is exposed to be covered with the execrations and the contempt of mankind ; to be set apart for ever as something polluted and debased ; and, as if his whole moral system were corrupted, is rendered unable to bear testimony as a witness. Now it cannot be disputed that shame, to a certain extent, is a feeling which should be excited by the penalty for every transgression ; but it is very dubious whether it is politic so far to arouse it as to make it the sole object of fear. A sense of it is always connected with something that is virtuous ; and as it is one of the last of our nobler feelings which forsakes us in the depths of iniquity, so it is that which all wise legislators are most anxious to preserve. When once this vestige of its original bloom is rubbed off the mind, it speedily assumes a hardened character of cool, deadly, unimagined vice ; whereas pain,

restraint and fear may be applied without danger of corrupting the heart, which they are intended to soften and mature. Hence the tendency of Mr. Lancaster's new-invented punishments, those boasted pillories in miniature, is open to considerable censure. The cradles, the baskets, the hen-coup cages, the pillows for drowsy scholars, the delectable imitations of Jewish sing-song, and the original labels of "suck finger baby," if not laughed at as silly, or enjoyed as sport, must lamentably tend to render their subjects callous to shame by its perpetual exercise. If they have any effect at all, it must be to disarm the sufferer of his most sacred defence against the pollutions of the world; to strike the ingenuous blush of modesty from his cheek for ever; and by inviting his companions to enjoy his anguish, excite in them the most unamiable and hardening emotions. So it is in the larger world with the infliction of the Pillory. To those who are already hardened, it threatens nothing which they are capable of feeling, while it degrades the man for ever in his own esteem, on whom wise discipline would have shed a salutary influence. He cannot look upon himself without shuddering. No matter how trivial his crime—how deep his anguish—how sincere his penitence—how elevated his capacities—he reads, or thinks he reads, contempt in the faces of all with whom he converses, and believing himself incapable of becoming respectable, he relaxes all his efforts, and crushes his impulses to virtue. He is defiled with a stain which even his innocence, if subsequently brought to light, could not wash away. And it must not be forgotten, that this influence, which strikes so deadly a palsy into the "heart of hearts," is exerted for the *purpose of reforming*. It is not a process for excluding those from the world, whom the lawgiver imagines he can restrain only by death; it is neither an expiation, nor a sacrifice; it sends back its



victims into society "with all their imperfections on their head;" attended with every circumstance of disgrace which can render them desperate. To take a man new to crime; to expose him to the pitiless derision of the world; to send him back into the walks of men impressed with a mark of indelible infamy; cut off from those social ties which form the charm of existence; and placed beyond the reach of those genial influences, those kindly affections, those heart-softening charities, which purify and elevate the soul; to take from virtue its finest rewards, and exhibit the fatal penalty of the worst of crimes as a welcome re-pose: this is the process of reform, dictated by human wisdom! This is something beyond the fatal absurdity which punishes for the sake of avenging; it is to inflict misery, to render the sufferer more wicked. It is not merely to oppose, but to reverse the maxim which forms the only solid foundation of penal enactments; that pain is to be used only as a means of increasing happiness; for here evil is employed but to render evil more abundant. Thus the Pillory is the preparation for the scaffold, though a stormy interval of rapine and crime frequently elapses between them.

II. This punishment is exceedingly unequal: and instead of falling with the greatest weight on those who are most unworthy, it is far most intolerable to those whom we should be tremulously anxious to redeem. A man in the respectable walks of life; one who has any remnant of character to lose, or any virtuous emotion clinging to his heart; must feel such an exposure far more acutely than a hardened villain. One who has any thing of public character, who has been accustomed to the applause of the insulting populace, will be oppressed with a stupefying horror compared to which death must be a trifling

evil. But what a state of unimaginable agony, of tumult and torture in every nerve, and faculty, and sensation, what a myriad of dreadful reflections must crowd into his paroxysms of despair, who still alive to the nicest perceptions of honor, full of the most chivalrous notions of romantic greatness, allied to the aristocracy in birth and united with the people in affection, has faced death in a thousand forms, and plucked the brightest laurels from the very centre of carnage, and is after all exhibited as a spectacle for the mob to gaze on, to pelt, or to pity! It is obvious that to such a man, unless armed with conscious innocence, this infliction is more terrible than a thousand deaths. If he be guiltless, indeed, he may lift his mind above all that man is able to inflict; but the punishment supposes him guilty. And to this all are liable; not only for crimes which shake society to its foundations; but for misdemeanours of infinite variety; for petty transgressions, into which the infirmity of human nature might betray the brave and the honorable; and for overstepping the bounds of ordinary prudence in the expression of offensive opinions. There is a power entrusted to the judges who are appointed by the crown to visit the slightest offences, and in some cases, the noblest ebullitions of generous feeling with an intellectual torture, which convulses the soul with a more writhing anguish, than the rack inflicts on the body. There are many acts of a man's life for which they may stab the vital principle of his moral being, while they leave the shell and empty husk, which it once pervaded, to move about a little longer. Had not the awful voice of public opinion interposed, such would have been the case of Lord Cochrane. A gallant nobleman, one of the bravest even of his country's brave defenders, is accused of partaking in a successful trick, and pursued with insatiable animosity by those who were daily attempting similar



impositions, but who never had so completely succeeded. Now, however, he is in the power of the court; a misdemeanour has been proved against him; justice arrays herself in unusual terrors; and is determined to show that it is above feeling any undue partiality for the elevated and the noble. The pure feelings of the Chief Justice cannot endure the suspicion that there should be one law for the rich, and another for the poor; and he is resolved to convince the most sceptical that the honors of a court have fallen harmless around him. He can regard no error of a Peer as venial; can look on no crime of a titled personage as a misfortune, which circumstances might palliate. With him the offence is aggravated by the title. He can find no punishment so suitable to point the climax of his sentence as the pillory, when a nobleman is the culprit. His rank, his bravery, his honors, all pleaded in vain; not even his zeal in the cause of reform and of justice could soften the rigor of his inflexible judge. This exceeding obduracy to rank and title must have alarmed the parasites of the court; for if the chief justice was thus severe to the *misdemeanours* of a lord, how much severer would he have been to those of a Marquis!

The people, however, while they admired this heroic firmness, thought it was carried to rather too lofty an elevation. They were neither above feeling, nor expressing their sympathy, with an unfortunate nobleman, but contented themselves with contrasting their silent indignation with the zeal of Lord Ellenborough's virtue. They did not regard it as fitting that the man who had "fought nations' battles, and been crowned with conquest," should be exposed to the ridicule of the foes into whose hearts he had so often stricken a deadly panic. Those who censured him before, now only men-

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tioned him with pity. The current of opinion was entirely changed by the severity exercised against him. The multitude seemed to regard him with more favor in proportion as he was denounced by the court. He was accused—most men believed him guilty—an indictment was preferred—they began to waver—he was convicted—their doubts increased—he was refused a second trial—the majority were anxious to acquit him—he was expelled the House of Commons—his constituents pronounced him innocent—he was sentenced to the Pillory—they covered his name with applauses as if he had returned from a fresh victory, and sent him back to Parliament triumphant. Whether this were a feeling merited by its object, we cannot positively ascertain, but it was honorable and generous and graceful, and peculiarly became the *people*, since it abundantly proved how little they were dazzled by that specious revolutionary principle—that all ranks should be visited with similar punishments. This is surely the most insane of all republican maxims. It is so manifest that the circumstances of the party must determine the punishment, because what to one is sport, to another is death; that one would imagine it useless to attempt the refutation of a fancy, which must have been started by some visionary leveller. It is strangely mysterious then that we should hear it maintained on a bench, whose associations are exquisitely loyal; yet nothing can be more certain than the paradox. Lord Mansfield informed a Jury in the case of the Duke of Cumberland, that a Prince should pay no more for his illicit amours, than a peasant; and Lord Ellenborough, no doubt with the noblest feelings of moral rectitude, a foe to unchristian distinctions, sees no reason why a naval commander should not be pelted as well as a petty-fogging attorney. How delightful would it be to the advocates of the rights of man to wel-

come the latter with a fraternal embrace, and to exalt the former to the pinnacle of their intellectual Pantheon !

III. A third reason why the Pillory is unfit for the purposes of legal justice is that it is in many cases very uncertain whether it will be any punishment at all, or whether it will be the occasion of applause and of triumph. Its very essence consists in the expression of public feeling, and depends on the fluctuating sentiments of the spectators. The judge can only sentence a convict to stand for a certain time exposed to the derision of the public ; but the public may choose whether they will deride ; there is no compelling them to hiss ; no statute to impeach them for silence. But they may go further ; they may sympathise, and cheer, and console ; and render the place intended by the law for the infliction of eternal disgrace, the scene of a prouder and more heartfelt triumph, than the pageants which have been attended with trappings of the most dazzling magnificence. The sentence is a virtual appeal from the judgment of the court to another tribunal, which may either confirm or reverse it by the most intelligible of voices. It constitutes a new court of appeal, whose judgment is both final and speedy, in the "unwashed artizans" of Cheapside, and the elegant inhabitants of Billingsgate. In short the judge vacates the august chair of justice to the mob ; to the factious and unruly ; to the very class whom he rounds every period by denouncing.

We need only glance at a very recent page in our history, in order to confirm our position. We have only to revert to that awful crisis, when a terrible attack was made on all that we esteem venerable and sacred ; when the whole system of Christianity seemed to totter to its foundation ; and all the dignities, and honors, and sine-

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cures, which have been reared on its basis, trembled beneath the puissant arm of a bookseller in Amen-corner. The time indeed must be fresh in the memory of us all, from the anxiety which harrowed up our souls, till we saw our religion and the cause of our God, safely confided to the guardianship of a special jury. The objections against truth were proved to be fallacious, by the conviction of Mr. Eaton, and nothing remained but practically to demonstrate the veracity of Scripture, by a proof transcending all the miracles of the primitive times; the setting the infidel in the pillory. So far all was smooth and easy, the sentence was very gravely pronounced, and the champion thus vanquished conducted to the scene of his infamy. The people were now to perform the rest, to show that they were Christians, by stifling him with mud, or by pelting him to death. But, strange to relate! they were not so inclined, and the great victory of truth wanted its perfect finishing. They were unable to discern how the doctrines of him, who, in the agonies of death, prayed for his infatuated murderers, could be exalted by covering an unhappy unbeliever with rotten eggs and derision. To maintain his precepts of universal charity, they thought stones and filth, however powerful, not the most characteristic of arguments. While they entertained the sincerest veneration for the Chief Justice and the Attorney General, they fancied it was scarcely necessary for them to interfere in the defence of a religion which can boast of so many learned and reverend defenders. All their best and most powerful feelings, indeed, led them to desire the failure of the desperate cause in which the victim of the court prosecution had embarked; but for that very reason they shuddered at defending it with mortal weapons; they thought that truth rested on too sure foundations to need the interfe-

rence of a special jury ; and that the cause of the Almighty would repel its assailants, without needing the assistance of the Attorney General. To them the sentence on Mr. Eaton appeared to be a bitter, though an unintentional libel on the faith it professed to defend ; as it opposed the mildness of its precepts, and confessed its inequality to an open combat with its strenuous and undisguised opposers. Whether these feelings were correct or fallacious, we need not examine ; it is enough to remember that they were loudly expressed ; and that the judgment of the King's Bench was made the occasion of an open triumph. Had Eaton been simply sentenced to imprisonment, the people might have commiserated his fate, but could never have averted his sentence. By his exposure in the pillory, the storm of censure and disgrace was turned from him, and poured on the heads of his prosecutors and his judges. And thus in every case, the verdict of the jury is liable to be reversed and the sentence virtually remitted. It is possible that the public may be correct in their opposition, as every enlightened mind feels they were in the case we have just alluded to, but the intention of solemn decisions is wholly frustrated by the appeal to them. The idea, if clearly examined, is of the wildest republican cast ; and would, if generally admitted into our system of jurisprudence, subvert its deepest and most sacred foundations.

IV. Akin to this objection, which applies so strongly to the public exhibition under our notice, is another which arises from the same source, and is pregnant with yet more serious evils. The mob are not only invited to rejudge the criminal, to annul the sentence, and to frustrate every end of public justice by turning a judicial punishment into an antijudicial victory ; but they are permitted



to heighten the sentence, to change its nature, and to avenge the transgression of the law by a violent infraction of its most obvious principles. A man who has merely been deemed worthy of an open disgrace, whose crime is only termed by the gentle name of a misdemeanor, is given up to the fury of the populace to be pelted until he is nearly expiring. They are to punish him according to their good pleasure. His *ultimate judges* are those who never heard his trial, who know nothing of the evidence on which he was convicted, and are wholly incapable of coolly estimating the magnitude of his offence. And not only are they entirely ignorant of the merits of the cause thus summarily brought under their cognizance, but liable to be blinded by prejudice, and wrought up to a frenzy by unhallowed passions. The law wisely gives them an opportunity of revenging all their private wrongs, of gratifying all their low malignities, and of embodying their untutored prejudices in deeds which may possibly be fatal to their victim. Had one of the advocates of the corn bill incurred the penalty denounced on Lord Cochrane, and that penalty been inflicted at the crisis of the popular discontents, which attended that mistaken proposition, it is probable his life would have been placed in imminent danger. A person convicted of perjury; the worst and most hardened of villains, might have excited some sympathy; but nothing is too bad for him who has opposed the fancies of the multitude. Let the Chief Justice bring the matter home to his own bosom, and suppose that some political friend of his Lordship's, who unfortunately might not share in his fame, some unhappy proposer of a new tax, or some obnoxious antagonist of Lord Cochrane, were to be convicted on a similar charge with that of the gallant and unfortunate officer. The supposition is, it is true, very improbable, for we are too well acquainted with the purity of his Lordship's



elevated connexions, to suppose it possible that any of them should be addicted to gaming, and especially to any trickery or unfairness in the pursuit. Still we have a right to make the supposition ; and we have surely a right also to suppose that no partiality arising from the connexion would in the slightest degree alter the sentence. And what, on such an occasion, must be his feelings, when he remembered that he was resigning his acquaintance, not to the sure measure of legal punishment adequate to the offence, but to the vengeance of the Westminster electors for his attacks on their pockets and their favorite. It may indeed be said that some of the crimes thus visited are well deserving the utmost fury of an enraged people, and that there is no punishment denounced against them by our penal code at all equal to the darkness of their guilt. Be it so. That affords no reason why the defects of the law should be made up by the assistance of popular tumult, or its necessities supplied by violence and outrage. In short, the pillory is in direct opposition to the principle upon which all laws are founded, and must serve, as far as its influence extends, to undermine the foundations of their authority. They were erected to control the unbridled passions of man, to take from individuals the power of revenge, to render punishments the determinate effect of firm and substantial enactments, instead of fluctuating with the rage and the sympathies of individuals, to prevent parties from being judges of their own injuries, to humanize society by taking from the strongest the power of inflicting arbitrary penalties by which it was reduced to a state of perpetual warfare, and to impress the mind with awe by the weight and the solemnity of their decisions. But this strange infliction actually reverses all these benign intentions which the collective wisdom of ages has gradually matured, it proceeds on antisocial principles, and tends to bring us back to our state of original barbarism. We have

all been taught that the sacred throne of justice should be exalted far above the passions and the ever-fluctuating sympathies of man, that its voice should be as certain as it is awful, and its sentences untainted with any of the grosser particles which move in a lowlier atmosphere. We have learnt that while increasing wisdom should improve our laws, their actual dictates should be received during their existence with a noble and generous obedience. But here, in opposition to all these maxims, we see in them a principle which tends to their own destruction, a secret cancer which by insensible degrees is eating away the vital principle on which their vigor and their majesty depend. A judgment of pillory is the worst of their enemies. If the mob applaud, they are set openly at defiance, and if on the other hand they break out into violence, the peace they should preserve is broken, the personal feelings they should subdue are excited, and the barbarous spirit of man unsoftened by civilization which they were formed to repress, is aroused by their powerful sanction. In the former case, the best emotions of the heart are injudiciously arrayed against their authority; and a competition is excited where it is the noblest policy to conciliate. In the latter, the people act the part of unauthorized executioners, and become familiar with the most brutal of pleasures—the delight in pain, the horrible laugh of demoniac exultation at the sufferings of a fellow being. Our societies for the suppression of vice, if any such now exist, should turn their eyes to such a spectacle, if they can bear to censure any evil which they may not allege in their *Qui Tam* informations to be “*against the form of the statute in such case made and provided.*” They who look on the tortures inflicted at a bull-baiting or a cock-fight with a virtuous horror, unless they measure out their disgust *according to law*, should feel much stronger indignation at the sight of a

fellow creature set up to be pelted almost to death amidst the drunken acclamation and infernal revelry of the lowest and most depraved of our species. And if it is thus pernicious in its immediate influence, it is not less dangerous in its example. Those whom you suffer to riot on the side of the laws may soon learn to oppose them with similar outrages. By allowing them thus to supply the deficiency of the lawgiver, we educate them for revolution and carnage. We give them arms to be awakened against our bosoms, whenever the breeze of discontent shall sweep over them. The hands which have learned to throw bricks and filth on the criminal, may exercise the same discipline on the judges, if they should be so unfortunate as to incur their displeasure.

Could we trace this mode of *punishment* to its origin, we should probably find that it was the first rude effort of barbarous tribes to avenge the perpetration of evil. It bears all the marks of republican fierceness with nothing of the noble air of freedom. The country where it should be frequently adopted, would soon become in effect more democratical than if all its rulers were chosen by universal suffrage. For in the latter case, the multitude are only the makers of the laws, and in the former, they execute summary vengeance with no boundary but that which is suggested by the variations of a moment's fury. It is sufficiently melancholy to see such a monument of savage life standing uninjured amidst the trophies of goodness and of virtue; but it is still more offensive to see it regarded as a pillar of our legislative system. It saddens us to see riots at all existing in a well regulated state; but we are doubly provoked by the strange anomaly which makes the laws appear to excite them. We regret to see a popular demagogue lead his follower to confusion and disorder, but our vexation has no bounds

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when a judge is compelled by the duties of his office to give up the reins to the frenzy of the shameless and the degraded. Let us not for a moment be misunderstood, when we couple the name of Lord Ellenborough with popular commotion. We know his loyalty to be unsullied even by the breath of suspicion, and his gratitude for the favor of his eminent patrons, to be too lively to allow him for a moment to desire any thing which should break their tranquillity. He would therefore feel most thankful to be relieved from the necessity of pronouncing such a sentence as that which has lately excited so powerful an interest. The feelings, however, even of the greatest men are subordinate to the extensive benefits which would flow from the abolition of the pillory. The current of public spirit, instead of bursting forth on every petty occasion with a wasteful fury which may destroy the fairest temples of human wisdom, would continue to flow on undisturbed in its broad and ancient course, to purify and fertilize a peaceful and happy country, and by a thousand gentle and secluded channels to water the scene enriched with the calm loveliness of domestic virtue, and sprinkled over with the dwellings of serene and unearthly enjoyment.